No. 15,162

IN THE

United States Court of Appeals

For the Ninth Circuit

BASILIO FUGIANI,
Appellant,

vs.

BRUCE G. BARBER, District Director, Immigration and Naturalization Service, San Francisco, California,
Appellee.

On Appeal from the United States District Court for the Northern District of California.

APPELLEE'S BRIEF.

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APPELLEE'S BRIEF.

PRELIMINARY STATEMENT.

The appellant Basilio Fugiani is a native and citizen of Italy. He entered the United States as a temporary visitor at the Port of New York on February 28, 1950, but remained in the United States for a longer time than permitted and is, therefore, deportable under the Immigration Act of 1924 on the charge contained in the warrant of arrest. The foregoing facts are admitted. The petition for review filed by appellant does not challenge the determination of deportability on the charge.

During the course of the proceedings, appellant made application for suspension of deportation and,

as an alternative form of relief, for voluntary departure under Section 19(c) of the 1917 Act (8 U.S.C. 155(c)). Appellant was found to be eligible to apply for relief under Section 19(c), but in the exercise of discretion under said Sec. 19(c), the relief sought was denied.

JURISDICTIONAL STATEMENT.

Appellant has commenced the action herein by filing a petition for review invoking jurisdiction under 5 U.S.C. 1009. His prayer for relief asks the court to declare the decision denying his application for *suspension of deportation* or, in the alternative, voluntary departure *and preexamination,* as an "arbitrary abuse of discretion" and that he "was not granted a fair and impartial determination." Appellant is admittedly a deportable alien. His petition for review does not challenge the decision of deportability. Appellant was admittedly eligible for suspension of deportation under 19(c). The petition does not claim a failure to exercise discretion but that the exercise of the discretion in the denial of the relief sought was arbitrary and capricious. Such limited review as may be within the province of the court is properly effected, short of detention, by a petition for review under 5 U.S.C. 1009, Sec. 10 of the Administrative Procedures Act.

Shaughnessy v. Pedreiro, 349 U.S. 48;
Jay v. Boyd, 351 U.S. 345;
Ceballos v. Shaughnessy, No. 71 October Term, S.Ct. decided March 11, 1957.

QUESTION PRESENTED.

Appellant in his brief has failed to state any question raised by his specification of errors. The appellee is at a loss to propound a question in his behalf. The Summary of Issues and Legal Argument would seem to be directed to anticipation of what might happen at some unidentified time in the future.

STATUTES INVOLVED.

Section 14, Immigration Act of 1924 (8 U.S.C. 214):

> "Any alien who at any time after entering the United States is found to have . . . remained therein for a longer time than permitted under this Act or regulations made thereunder, shall be taken into custody and deported in the same manner as provided for in sections 19 and 20 of the Immigration Act of 1917. . . ."

Section 15, Immigration Act of 1924 (8 U.S.C. 215):

> "The admission to the United States of an alien excepted from the class of immigrants . . . shall be for such time and under such conditions as may be by regulations prescribed . . . to insure that, at the expiration of such time or upon failure to maintain the status under which admitted, he will depart from the United States. . . ."

Sec. 19(c) of the Immigration Act of 1917 (8 U.S.C. 155(c)):

> "In the case of any alien . . . who is deportable under any law of the United States and who has

proved good moral character for the preceding five years, the Attorney General may . . . (1) permit such alien to depart the United States to any country of his choice, at his own expense, in lieu of deportation, (2) suspend deportation of such alien if he . . . finds (a) that such deportation would result in serious economic detriment to a citizen or legally resident alien who is the spouse, parent, or minor child of such deportable alien; . . ."

Regulations

8 C.F.R. 142—Preexamination of aliens within the United States (in effect prior to the Immigration and Nationality Act of 1952).

142.1. Who may apply.

"An alien who is a member of any of the following classes . . . *may,* subject to the provisions of this part, apply for the *privilege* of a preexamination. . . ."

142.2. Aliens eligible.

"(a) Admissible to Canada.

(b) Of good moral character.

(c) . . . . .

(d) Able to obtain the prompt issuance of an immigration visa in case it is determined that he is admissible to the United States for permanent residence."

142.7.

". . . preexamination will not be accorded . . . unless or until he . . . has received from the consular officer written assurance . . . that a visa will be promptly available . . ."

STATEMENT OF THE CASE.

Appellant, a native and citizen of Italy, was admitted to the United States on February 22, 1950 as a nonimmigrant (visitor), under Section 3(2) of the Immigration Act of 1924 at New York, New York. On March 28, 1950, he married a citizen of the United States. Subsequently, he appeared at the Immigration and Naturalization Service, San Francisco, where he admitted being in the United States illegally, and made application for discretionary relief under Sec. 19(c) of the 1917 Act. A warrant of arrest issued on June 25, 1951, on the charge under Secs. 14 and 15 of the 1924 Act that after admission as a visitor he had remained in the United States for a longer time than permitted. On September 23, 1952, he was accorded a deportation-expulsion hearing. The charge contained in the warrant was admitted and he was found to be a deportable alien. The privilege of suspension of deportation was denied but the privilege of voluntary departure was granted. At appellant's request, the proceedings were reopened on September 24, 1952, to permit appellant to put into the record a telegram to the effect that the American Consul General at Vancouver, Canada, had advised that a first preference visa was available to appellant. Based on said wire, the Special Inquiry Officer on October 7, 1952 amended the Order of September 23, 1952 to authorize the privilege of preexamination, said privilege to be accomplished by December 23, 1952. Several extensions of the time within which to depart under the said Order authorizing voluntary departure were granted. The last extension expired on July 20,

1953. In the meantime, appellant's wife filed a visa petition in his behalf in which appellant represented to the American Consulate General at Vancouver that he had never been previously married. (Tr. 10). Thereafter, the Immigration and Naturalization Service received information that appellant had been previously married. By Order dated July 28, 1953 (Appendices "A" and "B") the Order of September 24, 1952 granting voluntary departure and preexamination was withdrawn and the proceedings reopened. Appellant presented to the Immigration and Naturalization Service a letter from the American Consul dated November 25, 1952 (Appellant's Exhibit No. 2) stating that before action would be taken on his application it would be necessary for him to submit documentary evidence of the termination of this previous marriage. Appellant then instituted proceedings to annul said marriage. (Tr. 13).

On September 25, 1953, appellant was ordered deported from the United States. (Appendix "C".)

The Board of Immigration Appeals dismissed the appeal on October 5, 1954. (Appendix "D".)

ARGUMENT.

It is well settled that the power of Congress to regulate the deportation of aliens is plenary and only in cases of extreme abuse will courts intervene.

Hyun v. Landon, 219 F.2d 404, aff. split decision, 350 U.S. 990;

Carlson v. Landon, 342 U.S. 524, 536;

United States ex rel. Volpe v. Smith, 289 U.S. 422.

It is the conclusion of appellee that appellant's specification of errors is wholly unrelated to any issue which might be present in this case.

(1) The reasonable, substantial and probative evidence rule is drawn from Sec. 242(b) of the *1952* Immigration and Nationality Act (8 U.S.C. 1252(b)) and is related by the statute to the determination of deportability. Deportability is admitted by appellant. Discretionary relief sought is a "matter of grace."

Jay v. Boyd, 351 U.S. 345;

Hintopoulas v. Shaughnessy, 352 U.S. ....., 25 L.W. 4201;

United States ex rel. Kaloudis v. Shaughnessy, 180 F.2d 489, 491;

Wolf v. Boyd (C.A. 9) 238 F.2d 249.

(2) Appellant has made no attempt to establish that he was not given full opportunity to present his application for discretionary relief.

(3) Having exercised the discretion, judicial intervention is not warranted.

This conclusion is supported by the paragraph appearing on page 6 of appellant's brief entitled: *Summary of Issues and Legal Argument.*

> "The sole question to be determined at this time is whether the appellant sought to procure a visa or other documentation by fraud or by wilfully misrepresenting a material fact, within the meaning of Section 212(a) (19) of the Immigration and Nationality Act. This issue is of vital importance, because if it is determined that such is the case appellant would thereafter be ineligible to obtain an immigration visa or reenter the United States even temporarily."

Appellant uses the phrase "sole question" with regard to the procurement of a visa by fraud within the meaning of Section 212(a)(19) of the 1952 Act, but he makes no attempt to indicate within which specification of error this "sole question" arises. Continuing on to page 7 of his brief, it would appear that the "sole question" arises out of an administrative process known as preexamination. This process was not statutory but was established by regulations in effect *prior* to the 1952 Act. (8 C.F.R. 142).

Under 8 C.F.R. 142 an alien could have had his admissibility for permanent residence determined in advance by preexamination. However, preexamination could not have been accomplished "until he (the alien) has received from the consular officer written assurance . . . that a visa will be promptly available if, upon personal examination by the Consul, he is found to be eligible for a visa . . ." (8 C.F.R. 142.7).

This appellant was unable to satisfy. (Exhibit 2) Thus he was unable to bring himself within the qualifying provisions of the regulation.

Appellant admits that he notified both the Immigration and Naturalization Service and the American Consulate General at Vancouver that he had never been previously married. (Appellant's brief p. 10). Appellant had been previously married. This fact was discovered by the Department of State and resulted in the letter of the Consulate General, Vancouver, to appellant, dated November 25, 1952. (Exh. 2)

Appellant was eligible to apply for suspension of deportation under 8 U.S.C. 155(c) and the court below so found. (Tr. 15)

In the exercise of discretion under 8 U.S.C. 155(c), the relief of suspension of deportation was denied to appellant. (Tr. 15)

The power of the Attorney General to suspend deportation is a dispensing power like a judge's power to suspend the execution of a sentence, or the President's to pardon a convict.

United States ex rel. Kaloudis v. Shaughnessy, 180 F.2d 489, 491;

Jay v. Boyd, 351 U.S. 345.

The grant of the discretionary relief of suspension of deportation is not a matter of right, but rather is in all cases a matter of grace.

Jay v. Boyd (supra);

Hintopoulas v. Shaughnessy, 233 F.2d 705, aff. 352 U.S. .....

Appellee again states that appellant has raised no issue for determination on this appeal. "The Summary of Issues" refers to Sec. 212(a) (19) of the 1952 Immigration and Nationality Act and anticipates that should appellant at some time in the future seek to enter the United States he might be excluded on the ground that he had sought to procure a visa by fraud or by wilfully misrepresenting a material fact. The Special Inquiry Officer was not required to decide whether or not appellant had so attempted to obtain a visa. In his discussion of the evidence preceding the findings of fact and conclusions of law (Appendix "C") he expresses the opinion that "the record . . . clearly indicates that the (appellant) attempted to obtain an immigration visa . . . through fraud . . ." Appellant is in error in stating on page 5 of his brief the

Special Inquiry Officer directed that the "appellant be deported from the United States" because of this attempt. This statement is misleading. The findings and conclusions of the Special Inquiry Officer (Appendix "C") contain no finding or conclusion that appellant attempted to obtain a visa by fraud. In denying discretionary relief, the entire record was reviewed and the relief denied.

Appellant had represented to the American Consul that he had not been previously married, whereas in fact he had been married. The letter from the American Consul introduced as Exhibit (2) established his inability to satisfy the requirements of the regulation C.F.R. 142(1)(2)(7). Then followed the proceedings as related to the annulment of the marriage to Ellie Porg.

Upon the record as presented, discretionary relief having been denied, deportation was ordered on the admitted charge. Appellant's entire argument and his appeal is based upon an unstated postulate that there was a burden upon the Immigration and Naturalization Service to prove fraud or wilful misrepresentation. There was no such burden. On the contrary, full opportunity was afforded appellant to present such matter as might induce the exercise of discretion in his behalf. The relief sought was denied.

Chavez v. McGranery (C.A. 9), 220 F.2d 857;
Jiminez v. Barber, 235 F.2d 922.

CONCLUSION.

It is respectfully submitted that a review of the record in this case clearly shows appellant to be a deportable alien who sought discretionary relief. He was found eligible for such relief but in the exercise of the discretion, such relief was denied. The appeal should be dismissed and the judgment below affirmed.

Dated:

LLOYD H. BURKE,
United States Attorney,
CHARLES ELMER COLLETT,
Assistant United States Attorney,
Attorneys for Appellee.

(Appendices "A", "B", "C" and "D" Follow.)

Appendices.

Appendix "A"

July 28, 1953

Memorandum for attention of Special Inquiry Officer
P. R. McLaughlin and Docket Clerk
in the Inquiry Section

Re: Basilio Fugiani
V-944377

It is noted that at the conclusion of warrant proceedings before Special Inquiry Officer Robert S. DeMoulin on September 24, 1952, the following order was entered:

> "It is ordered that the respondent be permitted to depart voluntarily from the United States at his own expense within 120 days after this order.
>
> "It is further ordered that if the respondent fails to depart voluntarily from the United States within 120 days from the date of this order or any authorized extension thereof, that he be deported from the United States pursuant to law on the charge set forth in the Warrant of Arrest.
>
> "It is further ordered that preexamination be authorized, providing availed of prior to December 24, 1952."

In view of the fact that evidence has now been furnished to the Immigration and Naturalization Service indicating that the respondent's sworn statements as to his marital situation at the time of his application for discretionary relief granted at the above order were not in accordance with the true facts in his case and created a presumption at least that he may not

have been in all respects eligible for such relief, it appears that further proceedings are necessary to determine the respondent's eligibility for discretionary relief.

Since the special inquiry officer previously assigned to hold the hearing in this matter is not now immediately available, the case will be and is hereby reassigned to Special Inquiry Officer P. R. McLaughlin for such proceedings as may be required for the appropriate disposition of the case.

L. E. Gowen,
Acting Chief Inquiry Section

Appendix "B"

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service
San Francisco, California

File: V-944377
In re: Basilio Fugiani
In Deportation Proceedings

In Behalf of Respondent:

Z. B. Jackson, Attorney at Law
580 Washington Street
San Francisco, California

Charges:

Warrant: Act of 1924—Remained longer—visitor
Lodged: None.

ORDER TO REOPEN

Proceedings in the case of the above-mentioned alien, originally assigned to Special Inquiry Officer Robert S. DeMoulin and now requiring further attention and possible rehearing and having been assigned to me for appropriate action in view of the absence of Special Inquiry Officer DeMoulin, the following order is hereby entered:

Order: It is ordered that the order entered on September 24, 1952, granting the alien the privilege of voluntary departure and the further privilege of pre-examination with an alternative order of deportation be and the same is hereby withdrawn;

It is further ordered that the proceedings be reopened in order to determine the respondent's eligibility for discretionary relief in view of new and important evidence now contained in his official file.

/s/ P. R. McLaughlin
P. R. McLaughlin
Special Inquiry Officer

Appendix "C"

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service
San Francisco, California

Sept 25, 1953

File: V-944377

In re: Basilio Fugiani

In Deportation Proceedings

In Behalf of Respondent:

Z. B. Jackson, Attorney at Law
580 Washington Street
San Francisco, California

Charges:

Warrant: Act of 1924—Remained longer—visitor
Lodged: None.

Application: Suspension of deportation and voluntary departure in the alternative.

Detention Status: Released on conditional parole.

Warrant of arrest served: June 25, 1951.

Discussion: This record relates to a 28 year old married male, a native and citizen of Italy who last entered the United States at the port of New York as a passenger on the motor ship "Sobieski" at which time he was admitted by a Board of Special Inquiry as a temporary visitor under bond to June 1, 1950. That entry has been verified. The period of admission was not extended and the respondent has remained in the United States since June 1, 1950 without authority. He is therefore deportable under the

Immigration Act of 1924 on the charge stated in the warrant of arrest which is fully sustained.

This matter first came up for hearing under the warrant of arrest on Sept. 23, 1952 at which time the respondent applied for suspension of deportation with an alternative application for voluntary departure in the event he was found ineligible for the maximum relief requested. As evidence of his eligibility for discretionary relief, the respondent presented Immigration Form I 256A which was executed by him before the Deportation Examiner presiding at this hearing on Sep. 23, 1952 (Exhibit 3).

The respondent executed the jurat at the end of Exhibit 3 under oath that the contents of the application were true to the best of his knowledge and belief including certain corrections marked 1 to 6 were made by him or at his request. In this application form the respondent testified among other things that his deportation would result in serious economic detriment to his United States citizen spouse to whom he was married in San Francisco on March 28, 1950.

He also testified that he had not been previously married. At the conclusion of the proceedings on Sept. 23, 1952, the Hearing Officer found the respondent eligible solely for voluntary departure and entered an order granting such relief with an alternative order of deportation. On the following day, the proceedings were reopened by the Hearing Officer on his own motion at which time the respondent advised that he had just received information from the Amer-

ican Consul in Vancouver that he might readily obtain an immigration visa at that Consulate, and in addition to the relief already granted applied for preexamination. At the conclusion of that proceeding, the Hearing Officer found the alien deportable on the charge contained in the warrant of arrest and entered an order granting voluntary departure together with the additional privilege of preexamination with an alternative order of deportation. The respondent was formally advised as to the authorization for preexamination on Oct. 7, 1952 and advised that such authorization would terminate on Dec. 23, 1952. He received several extensions of the time within which he was to depart under the order granting voluntary departure; the last of which expired on July 20, 1953 with notice that that was the final extension and no further time would be granted. In the meantime, the respondent's wife filed a visa petition in his behalf which was approved and later found its way to the American Consul at Vancouver in the usual course of events. Under date of June 23, 1953, this office received a communication from the Central Office of the Immigration and Naturalization Service containing information that this respondent had been previously married and that he had presented no evidence to the American Consulate in Vancouver that his prior marriage had been terminated. The respondent admits having received a letter from the United States Consul General at Vancouver, B.C., Canada dated November 25, 1952 through his advisor, Mr. J. S. Forte, 57 Columbus Avenue, San Francisco 11, California which is quoted in part as follows:

> "In further reference to the case of Mr. Fugiani, it is noted that in his preliminary application he stated that he has not been married previously; and in her petition for her husband's preference status, Mrs. Ida Maria Artigiani Fugiani also stated that her husband has not been previously married. Information on file at this office indicates that Mr. Fugiani was previously married to a German girl while he was a prisoner of war in Germany. Before the Consulate General could take further action in Mr. Fugiani's case, it will be necessary for him to submit documentary evidence of the termination of this previous marriage."

A copy of that communication was forwarded to this office. The respondent then through Counsel requested additional time within which to depart in order to enable him to complete an annulment action.

In view of the above developments, the case was reassigned to a Special Inquiry Officer for appropriate attention and was thereafter ordered reopened for the taking of additional evidence as to the respondent's eligibility for discretionary relief.

At the reopened proceedings the respondent presented a decree of annulment entered in the Civil and Penal Tribunal of Ancona, Italy on the 10th day of July, 1953 showing the termination of his marriage to one Elly Martha Porg residing in Berlin—Kochkausstrasse N. 33 was contracted on Sept. 4, 1945 in the City of Berlin. In the action for annulment, the respondent alleged through Counsel that after having escaped from a prisoner of war camp in or near Ber-

lin, Germany in 1945, he was given shelter by the family of Elly Porg for approximately 15 days. And, on that occasion, he was asked and he did affix his signature in the presence of third parties on a sheet of paper for the purpose, as he was told, to let the Porg family obtain food rations and clothing since they were his hosts and went on to state that he never intended to contract matrimony with the said Elly and that the marriage had never been consummated. It is also noted that in the decree of annulment that mention is made of the fact that Elly Porg appeared through her constituted attorney which is followed by another statement, "Being she was present however in person" at the proceedings and is alleged to have been questioned.

The record in this case clearly indicates that the respondent attempted to obtain an immigration visa for admission to this country through fraud and that he carefully concealed from the authorities that he had been previously married. His statement to the effect that he went through a marriage ceremony and signed papers in Berlin in the belief that the proceedings related only to rationing is incredible. It is indicated that he was in company of several other escaped Italian war prisoners who also signed papers concerning rationing and they certainly did not all go through the same procedure. It might be observed here that Germany for many years has maintained excellent records of vital statistics, and it is inconceivable that an alien however unfamiliar with the German language in possession of all of his faculties could

actually go through a marriage ceremony without being conscious of the fact. It appears that he and the other Italian prisoners were able to make themselves understood by the Porg family who evidently spoke only German and in the event they were able to explain to this respondent that they needed his signature for additional food and clothing, it naturally follows that he should have been able to understand that a marriage was involved. I believe that this respondent was fully aware of his prior marriage and deliberately withheld such information from the authorities of this country even to the extent of committing perjury in his application for discretionary relief. This respondent has shown an utter disregard for the Immigration laws of this country. After being admitted under bond for a short period of time and being denied an extension of stay, he deliberately violated the status of his admission and the bond was breached. It is noted that the date of his marriage to the American citizen was contracted exactly one month after the date of his admission. The conclusion is justified that he was never a bona fide visitor and that his intentions in the first instance were to remain in the United States at all costs. In view of all the facts and circumstances, I can only conclude that the respondent is wholly ineligible for any type of discretionary relief and should be deported and shall so order.

FINDINGS OF FACT:

Upon the basis of all the evidence presented, it is found:

(1) That the respondent is an alien, a native and citizen of Italy;

(2) That the respondent last entered the United States on February 22, 1950 at New York, New York as a passenger on the MS Sobiesky at which time he was admitted as a visitor to June 1, 1950;

(3) That the period of admission was not extended;

(4) That the respondent has remained in the United States for longer than the period for which he was admitted.

CONCLUSION OF LAW:

Upon the basis of the foregoing findings of fact, it is concluded:

(1) That under Sections 14 and 15 of the Immigration Act of May 26, 1924, the respondent is subject to deportation on the ground that after admission as a visitor, he has remained in the United States for a longer period than permitted under said Act or regulations made thereunder.

ORDER: It is ordered that the alien be deported from the United States in the manner provided by law on the charge contained in the warrant of arrest.

/s/ P. R. McLaughlin
P. R. McLaughlin
Special Inquiry Officer

PRM;as

Appendix "D"

UNITED STATES DEPARTMENT OF JUSTICE
BOARD OF IMMIGRATION APPEALS

OCT 5—1954

File: V-944377—San Francisco
In re: Basilio Fugiani
In Deportation Proceedings

In Behalf of Respondent:

Z. B. Jackson, Esquire
580 Washington Street
San Francisco, California
(Brief filed)

CHARGES:

Warrant: Act of 1924—Remained Longer—Visitor
Lodged: None

APPLICATION: Voluntary departure and preexamination

DETENTION STATUS: Released on conditional parole

The case comes forward on appeal from the order of a special inquiry officer dated September 25, 1953 directing that the respondent be deported on the charge stated in the warrant of arrest.

The record relates to a native and citizen of Italy, 39 years old, male, who last entered the United States at the port of New York on February 28, 1950 and was admitted as a temporary visitor to June 1, 1950. It is conceded that he is subject to deportation on the charge stated in the warrant of arrest. The only issue before us is the matter of discretionary relief.

At the hearing held September 23, 1952, the respondent applied for suspension of deportation and in the alternative voluntary departure. In connection therewith, he executed Immigration Form I-265A executed before the deportation examiner then presiding on September 23, 1952 under oath. In this application form, the respondent related that his deportation would result in serious economic detriment to his citizen wife whom he married in San Francisco on March 28, 1950. He testified that he had not been previously married. At the conclusion of the proceedings, the respondent under order of September 24, 1952 was granted the discretionary relief of voluntary departure in lieu of deportation together with preexamination. A visa petition filed by the wife on behalf of the respondent was approved, and such approval was in due course transmitted to the American Consulate, Vancouver, B. C. The Consul under date of November 25, 1952 informed the respondent through his representative that whereas the preliminary application of the respondent stated that he had not been previously that the respondent was previously married to a German girl while a prisoner of war in Germany. In view of this information, the proceedings were ordered reopened.

At the reopened proceeding, the respondent presented a decree of annulment entered in the Civil and Penal Tribunal of Ancona, Italy on July 10, 1953 showing the termination of his marriage to one Elly Martha Porg, such marriage having been contracted on September 4, 1945 in the City of Berlin, Germany. It is the contention of the respondent that he was

tricked into marriage by the girl and her parents. This was done after the respondent had escaped from the prisoner of war camp in Germany in 1945, after which he was given shelter by the family of Elly Porg for approximately 15 days; that during this time he affixed his signature in the presence of a third party on a sheet of paper for the ostensible purpose of permitting the Porg family to obtain food rations and clothing since they were his host. He denied that he intended to contract matrimony and stated that the marriage had never been consummated.

The special inquiry officer who heard the testimony of the respondent and had an opportunity to observe his behaviour and demeanor has characterized the explanation given by the respondent in regard to his marriage to Elly Porg as incredible. He has concluded that the respondent was fully aware of his prior marriage and deliberately withheld such information from the immigration authorities for the purpose of obtaining discretionary relief. Upon consideration of the entire record and taking into account the arguments advanced by counsel in his brief, we come to the conclusion that the decision should not be disturbed. Accordingly, the appeal will be dismissed.

ORDER: It is ordered that the appeal be and the same is hereby dismissed.

/s/ Thos. G. Finucane
Chairman